

<p>VOLUME: 1 PAGES: 162 EXHIBITS: 31432</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p>-----X</p> <p>ITV DIRECT, INC. Plaintiff:</p> <p>Vs</p> <p>CIVIL ACTION NO. 04-CV-10421-JLT</p> <p>HEALTHY SOLUTIONS, LLC, ET AL. Defendants</p> <p>-----X</p> <p>AND RELATED ACTIONS</p> <p>-----X</p> <p>DEPOSITION OF JASON BERNABEI</p> <p>taken on behalf of the Defendants pursuant to the Federal Rules of Civil Procedure, before Carole M Wallace, Certified Shorthand Reporter and Notary Public, at the office of Fosterhak, Blankstein & Lund, LLP, 800 Boylston Street, Boston, Massachusetts 02199, on Friday, August 20, 2004, commencing at 9:57 a.m.</p> <p>HENNESSEY CORP. d/b/a ROBERT H. LANGE CO. 50 Congress Street - Boston, Massachusetts 02109 Tel: (617) 523-1874 Fax: (617) 523-7343</p>		<p>Page 3</p> <p>INDEX</p> <p>1</p> <p>2 Witness Direct Cross Redirect Recross</p> <p>3 JASON BERNABEI 5</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 EXHIBITS</p> <table border="1"> <thead> <tr> <th>No</th> <th>Description</th> <th>Ident</th> </tr> </thead> <tbody> <tr> <td>12 31</td> <td>Label, Supreme Greens with MSM</td> <td>53</td> </tr> <tr> <td>13 32</td> <td>ITV447 - ITV506</td> <td>92</td> </tr> </tbody> </table> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	No	Description	Ident	12 31	Label, Supreme Greens with MSM	53	13 32	ITV447 - ITV506	92
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1 APPEARANCES:

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7 On behalf of the Plaintiff

8 Becky V. Christensen, Esq.

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10 384 Forest Avenue

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13 On behalf of the Defendants

14

15 VIDEOGRAPHER:

16 Stephen Hartman, CING

17 Hennessey Corp. d/b/a

18 Robert H. Lange Co

19 50 Congress Street

20 Boston, Massachusetts 02109

21 617 523-1874

22

23 ATTORNEY CHRISTENSEN RETAINED THE ORIGINAL EXHIBITS

24

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1 THE VIDEOGRAPHER: We are now recording

2 and on the record. My name is Steve Hartman and I

3 am a Certified Legal Video Specialist for Hennessey

4 Corp. DBA Robert H. Lange Co. Our business address

5 is 50 Congress Street, Boston, Massachusetts 02109

6 Today is August 20, 2004. The time is 9:57. This

7 is the deposition of Jason Bernabei in the matter of

8 ITV Direct, Inc, Plaintiff Vs. Healthy Solutions,

9 LLC, et al, Defendants, in the United States

10 District Court, District of Massachusetts, Civil

11 Action 04-CV-10421-JLT. This deposition is being

12 taken at 800 Boylston Street, Boston, Massachusetts

13 on behalf of the defendants. The court reporter is

14 Carole Wallace.

15 Will counsel please state their

16 appearances, and the court reporter will administer

17 the oath.

18 MS. CHRISTENSEN: I'm Becky Christensen

19 from the law firm of Levin & O'Connor. I represent

20 Healthy Solutions, LLC; Health Solutions, Inc;

21 Alejandro Guerrero, Michael Howell and Greg

22 Geremesz.

23 MR. ROBERTSON: My name is Christopher

24 Robertson with the law firm of Seyfarth Shaw in

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1 A Mr. Tarmey was not
 2 Q I want to go back just for a second to that
 3 conference call and the successes that Alex Guerrero
 4 talked about Did he indicate as far as you can
 5 recall at any time that he had done double-blind
 6 variable controlled studies on Supreme Greens?
 7 MR. ROBERTSON: Objection.
 8 A I don't recall
 9 Q Did he or anyone from Health Solutions or Healthy
 10 Solutions ever tell you they had done double-blind
 11 variable control studies relating to Supreme Greens?
 12 A They just talked about studies
 13 Q Is there anything else about that conference call
 14 that you remember in substance that you haven't told
 15 me already?
 16 A No
 17 Q So the -- When was your next involvement, if any,
 18 with the Supreme Greens project?
 19 A Mike and myself had an ongoing -- We talked here and
 20 there about when the production would be done I
 21 believe we talked mostly by phone It was a hi, how
 22 are you kind of conversations And my next major
 23 involvement was actually when they came out to do
 24 the shoot

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1 Q Before we get there, I'd like to hand you what has
 2 previously been marked as Exhibit 6. I'd like you
 3 to take a few moments to look at that document.
 4 A (The witness complies.)
 5 MS. CHRISTENSEN: While you are doing
 6 that, I will represent to your counsel that is a
 7 document entitled Distribution Agreement.
 8 Mr. Robertson, would you prefer that I hand you the
 9 exhibits first?
 10 MR. ROBERTSON: No, that's fine.
 11 A Okay.
 12 Q Do you recognize this document?
 13 A Yes.
 14 Q Have you seen it before?
 15 A Yes.
 16 Q Approximately when do you first recall seeing that
 17 document marked as Exhibit 6?
 18 A It was after Mike and Bill had talked. I believe
 19 that it was shown to me or given to me prior to
 20 going over to Mike. I might have actually sent it
 21 to him, I'm not exactly sure.
 22 Q Do you recall dealing with only one version of this
 23 document, or do you recall multiple versions?
 24 A I don't know.

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1 Q You don't remember?
 2 A I don't remember
 3 Q Did you read this document at the time that you
 4 first saw it?
 5 A I believe I was asked to
 6 Q Did you discuss it with Mike Howell at all?
 7 A I don't recall Most of that conversation was going
 8 on between Mike and Bill.
 9 Q Around the time that this document was being signed,
 10 what did you understand the business goals of ITV
 11 Direct to be?
 12 A To market the product on television and be
 13 successful.
 14 Q Make profit?
 15 A Make profit.
 16 Q Were there any other business goals that you can
 17 recall?
 18 A I don't understand the question
 19 Q Let me just ask you it in a little bit different
 20 way: Obviously they wanted to sell product,
 21 correct?
 22 A Yes
 23 Q And they wanted to make money doing that?
 24 A Of course

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1 Q What was your understanding about who would own the
 2 name Supreme Greens at the time this document was
 3 circulated?
 4 A I don't recall
 5 Q You have no memory of that?
 6 A Most of that wasn't really discussed with me.
 7 Q Did you discuss this particular contract with
 8 Mr. Barrett at the time?
 9 A I never talked to Donald Barrett about this
 10 agreement.
 11 Q Did you discuss it with Mr. Tarmey?
 12 A I may have My biggest recollection was when Bill
 13 Tarmey told me it was completed and signed It took
 14 a while. I'm not sure what they were dealing with
 15 Q Did Mr. Tarmey discuss with you at the time it took
 16 to get this contract signed the progress of those
 17 discussions with Healthy Solutions?
 18 A No
 19 Q Did anybody discuss the progress of those
 20 discussions with you?
 21 A No.
 22 Q Looking at what has been marked as Exhibit 6, does
 23 that refresh your memory about when the conference
 24 call took place with you and Mr. Barrett, Mr.